UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 688

Case No. 738: NOBLE

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas Montero, Vice-President; Mr. Mikuin Leliel Balanda;

Whereas at the request of Miriam Noble, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended the time-limit for the filing of an application with the Tribunal to 30 June 1993;

Whereas, on 29 June 1993, the Applicant filed an application requesting the Tribunal to order:

"(a) That the recommendation of the JAB in paragraph 12 be rejected, as well as the Secretary-General's decision based on said recommendation;

(b) That in accordance with article 9, paragraph 1 of the Statute of the Tribunal, the decision of the Secretary-General as communicated to the Applicant in [a] letter dated 29 August 1991 be rescinded, and the Applicant be reimbursed the amount of $355.37, which was deducted from her October 1991 monthly benefit.

In addition, that all short-payments arising from errors in the Applicant's pension record be rectified, as required, and adequate compensation be made to her for any losses sustained on her pension benefits/entitlements arising from errors and/or omissions in the data on her pension record, attributable to the Respondent;

(c) That in the event the Secretary-General decides to exercise the option provided under article 9, paragraph 1 of the Statute, the Applicant be paid an amount in compensation equivalent to at least two years' net salary of the Applicant in 1988;

(d) That the Respondent accurately and completely correct the inaccuracies in the Applicant's pension record with respect to the crediting of the 74 days specified in paragraph XI of Judgement 407, as well as other errors here discussed by the Applicant and in her related appeal, particular care being taken to ensure that the corrections of the data have retroactive effect as required.

(e) That the Applicant be awarded compensation and interest on all short-payments of her pension entitlements arising from errors or otherwise in her pension record at the annual rate of 18 per cent for the duration involved prior to settlement.

(f) That the Applicant be awarded damages and compensation for the injury and inconvenience, hardship and suffering caused by the deduction of more than half of her monthly benefit for October 1991.

(g) That the Applicant be provided with a detailed explanation concerning the corrections made to the data on her pension record and the status of her pension entitlements."

Whereas the Respondent filed his answer on 18 November 1994;

Whereas, on 25 April 1995, the President of the Tribunal put questions to the Respondent, and on 19 and 24 May 1995, he provided his answers thereon;

Whereas the Applicant filed written observations on 31 May 1995;

Whereas, on 14 June 1995, the Applicant filed an additional statement;

Whereas, on 27 June 1995, the Tribunal put questions to the Respondent, and on 27 and 30 June 1995, he provided his answers thereon;

Whereas, on 11 July 1995, the Applicant submitted comments on the Respondent's submissions of 27 and 30 June 1995;

Whereas, on 12 July 1995, the Tribunal put a question to the Applicant, and on 18 July 1995, she provided her answer thereon;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 3 September 1963. On 25 May 1987, the Tribunal rendered Judgement No. 382, setting forth certain principles for determining the proper deductions for unauthorized absences from work. It directed the Respondent to recalculate and to repay to the Applicant any resulting amounts due, with interest at nine per cent per annum. On 13 November 1987, the Tribunal rendered Judgement No. 407 resolving disputed issues arising in Judgement No. 382. In that Judgement, the Tribunal ordered, inter alia, that the Applicant's days of absence be reduced by 74.

The Applicant retired on 31 December 1988, and her pension benefits commenced on 1 January 1989. On 25 February 1991, the Tribunal rendered Judgement No. 503, holding, inter alia, that the application was an improper effort to relitigate issues involved in Judgements No. 382 and 407. The Tribunal also noted in its Judgement that "the Pension Fund has not yet received a final report on the correct pension contributions by the Organization."

In a letter dated 2 October 1991, the Secretary of the United Nations Joint Staff Pension Fund (UNJSPF) informed the Applicant that he had "finally received a reconciled accounting of your contributory service and leave-without-pay periods from 1981 to 1988 from the UN Accounts Division, together with a revised separation notification reflecting an adjustment to your reported contributions to the Fund." On the basis of this information, the UNJSPF had recalculated the Applicant's entitlements and determined that she had been overpaid a total of $355.37. She was notified that this amount would be deducted from her October 1991 benefit cheque.

In a letter dated 12 October 1991, the Applicant wrote to the Secretary of the UNJSPF noting that "the data thus far provided, fail to satisfactorily account for wide disparities shown in entitlements in a previous record ... as opposed to entitlements now

indicated to the end of 1988" and stating, inter alia, that the deduction made from her October benefit "appears to be premature, and indeed unfair, since I believe an option should have been given me as to the method of repayment ..., assuming your determination of my entitlements is correct."

In a reply dated 4 December 1991, the Secretary of the UNJSPF noted that "the Pension Fund received a final reconciled accounting of your contributory service and leave-without-pay periods from the UN Accounts Division" and advised her that questions concerning that accounting should be addressed to the UN, and not to the Pension Fund. He explained that a difference in the total leave-without-pay reported accounted for the difference between the benefit amounts estimated in the 1987 annual statement and the actual entitlements described in the letter of 2 October 1991. He further explained that in the Applicant's case an exception had been made to commence paying pension benefits provisionally, prior to the resolution of discrepancies in accounting. For this reason an adjustment had to be made subsequently, following the receipt of a final reconciled accounting and the final determination of benefits payable, which "showed that a total excess amount of $355.37 had been paid to you".

On 9 December 1991, the Applicant wrote to the Secretary of the UNJSPF, requesting UN documentation on her separation. She noted that the data sent with the letter of 2 October 1991 was inaccurate in regard to the total period of contributory service and to the total amount of her contributions to the Pension Fund. She submitted data "intended to show not only that you acted in error in deducting from my October 1991 monthly payment, the sum of $355.37 for alleged overpayment of my benefits/entitlements, but moreover ... that substantial balances on my lump-sum and periodic pension benefits also remain to be paid". She noted, inter alia, that the UN Accounts Division had failed to credit 74 days to leave entitlements, pursuant to Judgement No. 407, and itemized the differences between the leave-without-pay reported in the final audit report of her leave record, dated 30 August 1989, and that

reported in the UNJSPF letter of 2 October 1991. She requested reimbursement of the $355.37 deducted from the October 1991 payment, and payment of the "substantial balances" due.

On 27 December 1991, the Applicant wrote to the Secretary-General, attaching copies of her correspondence, to inform him "that the information the UNJSPF sent me ... (which it said was received from the UN Accounts Division) contains major errors that have resulted in substantial reductions of the amounts due me in lump-sum and periodic benefit pensionable entitlements." She requested the resolution of discrepancies in her record to "arrive at an early settlement of my claims for balances due and interest and compensation thereon."

Subsequently, on 6 March 1992, the Applicant lodged an appeal with the Joint Appeals Board (JAB). In the meantime, on 3 March 1992, a Senior Personnel Officer, Office of Human Resources Management (OHRM), wrote to the Applicant concerning the implementation of the Tribunal's Judgement No. 407. She noted that the amount due as a result of her being credited with 74 days "has already been paid to you by the Accounts Division" and that OHRM "must issue a P.5 action [Personnel Action] reflecting the above mentioned period as part of your contributory service with the United Nations Joint Staff Pension Fund." She asked that the Applicant contact her to discuss the matter personally, "in view of the complexity of the case."

On 12 March 1992, the Applicant wrote to the Senior Personnel Officer, OHRM, in reference to her letter of 3 March, that she had not been paid the 74 days credit due in accordance with Judgement No. 407. She stated that the issue "involved not only a resolution of the question of non-payment of the 74 days ... but also the issue of erroneous charges of leave-without-pay". She noted that the JAB was considering these matters.

The JAB adopted its report on 11 December 1992. Its considerations, conclusions and recommendations read, inter alia, as follows:

Considerations

8. The Panel considered the fact that wherein the Appellant had the deductions taken from her 1 October 1991 pension check, but did not request an administrative review until 27 December, that this was beyond the two-month period allowed for such. ...

...

10. The Panel further noted that the Respondent acknowledged errors made by the Administration and stated that these would be remedied.

Conclusions and recommendations

...

12. The Panel concluded that no action is necessary inasmuch as this appeal is time-barred, res judicata and remedied. By virtue of any of these, the subject has been rendered moot.

..."

On 7 January 1993, the Director of Personnel transmitted to the Applicant a copy of the JAB report and informed her, inter alia:

> "The Secretary-General reviewed your case in the light of the Board's reasoning and accepts its recommendations as presented in paragraph 12 of the Board's report. No action, therefore, will be taken in regard to your appeal."

On 9 March 1993, the Applicant wrote to the Secretary of the UNJSPF, noting that the JAB report stated "that the U.N. had made the necessary corrections to the record concerning payments of my pension contributions". She asked for "any details showing how these corrections were made and the impact they have had on my entitlements." In her view, such corrections "should result in an increase in my pension entitlements above payments already made." On 6 May 1993, the Applicant wrote again to the Secretary of the UNJSPF, noting that she had received no reply to her earlier letter and requesting again the information sought.

On 29 June 1993, the Applicant filed with the Tribunal the application referred to earlier.

In a letter dated 30 August 1994, the Secretary of the UNJSPF informed the Applicant that on 31 March 1994, he had received a reconciled accounting and a revised separation notification from the UN Accounts Division, resulting in the credit of additional periods of contributory service and the re-determination of her entitlements from the Fund. He informed her that as a result of the recalculations, a lump sum of $496.50 had been processed on 24 August 1994 and benefit adjustments from 1 January 1989 to 31 August 1994, amounting to $864.13, would be included in her September 1994 benefit. He noted, "the above adjustments take into account the recovery of US$355.37 made from your benefit for October 1991."

On 19 May 1995, the Respondent informed the Tribunal that action had been taken to credit the Applicant with an additional period of 60 days of UNJSPF contributory service and to pay her $832.62 in commutation of 8.5 days of annual leave accrued against the 74 days.

Whereas the Applicant's principal contentions are:

1. The Respondent failed, as ordered by the Tribunal in Judgement No. 407, to credit the Applicant with 74 days of contributory service, and provided to the UNJSPF inaccurate information concerning the Applicant's leave entitlement and contributory service, which resulted in the improper deduction of $355.37 from benefits payable to her.

2. The matter has not been "remedied" as maintained by the JAB in its report. The required corrections should result in additional payments reflecting the Applicant's increased pension entitlements.

3. The Respondent's negligence is a violation of the Applicant's terms of employment under staff regulations 6.1 and 11.1 and staff rules 103.16 and 111.3.

Whereas the Respondent's principal contentions are:

1. The application is time-barred as the request for administrative review of the contested decision was not submitted within the required time period set forth in staff rule 111.2(a).

2. The Respondent has taken the required action to accord the Applicant her full emoluments under Judgement No. 407. Although inconvenienced by the Respondent's actions, the Applicant did not incur any substantive injury warranting an award of damages.

The Tribunal, having deliberated from 27 June to 21 July 1995, now pronounces the following judgement:

I. This is an appeal from a decision of the Secretary-General dated 7 January 1993, accepting a Joint Appeals Board (JAB) recommendation to take no further action on the Applicant's claim. The JAB recommendation was based on its conclusion that the appeal "is time-barred, res judicata, and remedied" and that hence, the subject was moot. Except as set forth below, the Tribunal concurs in the JAB's analysis and in the Respondent's decision based thereon.

II. The Applicant's complaint has two aspects. On the one hand, she appears to be challenging, once again, the method of calculating the period of service to which she was entitled for purposes of payments to her by the Organization and the UN Joint Staff Pension Fund (UNJSPF). This is yet another effort to relitigate matters previously decided by the Tribunal, as well as an effort to litigate matters that are time-barred. On the other hand, she complains that the Tribunal Judgement No. 407 was not complied with fully. To the extent that the Applicant's contentions represent an attempt by her to relitigate issues previously decided, there is no doubt that the doctrine of res judicata is applicable as an absolute bar and that any such attempt must be deemed frivolous. Issues that are time-barred are likewise not properly before the Tribunal. However, the

Applicant's contention that the Respondent has not complied fully with what was ordered by the Tribunal in Judgement No. 407 is of quite a different nature.

III. In the Tribunal's view, the JAB erred in concluding that the Applicant's request for a review by the Secretary-General was untimely. She reacted promptly on 12 October 1991, to a letter dated 2 October 1991, from the Pension Fund. It was not until the Applicant received the letter, dated 4 December 1991, from the Pension Fund, that it became clear to her that it was not the Pension Fund but, rather, the Organization with which she had to communicate in order to obtain a correction of Pension Fund payments based on incorrect data resulting from the failure by the Organization to implement Judgement No. 407. Once the Applicant was made aware of this, the record shows that she acted without any undue delay. Hence, the Tribunal decides that her appeal to the JAB was not untimely.

IV. The Applicant, by letter dated 12 October 1991 to the Pension Fund, requested data which had not previously been provided to her in order to assist her in analyzing the correctness of the alleged overpayment. This was provided to the Applicant by a letter dated 4 December 1991, from the Pension Fund. In that letter, she was advised to take up with the UN Administration any questions regarding calculations furnished by the United Nations. This letter apparently crossed in the mail with a letter dated 9 December 1991, from the Applicant to the Pension Fund in which she set forth, to the extent she could, her position regarding errors in past and anticipated future payments pursuant to the letter dated 4 December 1991. She also reiterated her request for the data she had asked for in her 12 October 1991 letter. By letter dated 27 December 1991, obviously written as a result of the letter dated 4 December 1991, from the Pension Fund, the Applicant wrote to the Secretary-General, requesting correction of her record with regard to pension entitlements. This letter specifically informed the Secretary-

General of the Applicant's belief that the Organization had failed to implement Judgement No. 407.

V. The Respondent has acknowledged before the Tribunal the correctness of the Applicant's complaint that, for a lengthy period, the Respondent did not comply fully with Judgement No. 407. As a result, there was a considerable delay in payment by the Respondent to the Applicant of the amount owing to her, and payments she received from the UNJSPF were not what they should have been. This first came to the Applicant's attention in October and December 1991, when she was informed by the Pension Fund that the Organization had transmitted a reconciled report of her contributory service and that it showed that payments she had been receiving provisionally since January 1989, which were based on estimated benefit amounts, had been excessive. The amount of the excess was said to be $355.37 and that amount was deducted from her October 1991 monthly pension, and reimbursed through a subsequent adjustment.

VI. Since the Administration has acknowledged its failure to implement Judgement No. 407, there is no need for the Tribunal to reiterate Judgement No. 407. The Tribunal considers that the Administration, by paying $832.62, representing accumulated annual leave, and by transmitting to the Pension Fund corrections with respect to the Applicant's period of contributory service, has now done what should have been done a long time ago, in fulfilling that Judgement.

VII. The Tribunal notes, however, an extraordinary degree of incompetence or negligence, or both, on the part of the Administration in the handling of this matter, including erroneously informing the JAB that it had fully implemented Judgement No. 407 with respect to the 74-day credit ordered by the Tribunal. Although this erroneous information was furnished to the JAB prior to 11 December 1992, it turns out that it was not until sometime in

1994 that it was actually corrected. And, as late as 4 November 1994, and 22 May 1995, still other errors in information previously furnished by the Administration to the Pension Fund were corrected. A further payment had to be made by the Organization to the Applicant to implement Judgement No. 407, and two separate corrections involving additional payments to the Applicant by the Pension Fund became necessary, the last correction being made only on 30 June 1995. The Tribunal considers such inexcusable behaviour and delays in the implementation of its Judgement to be not only deplorable, but also symptomatic of administrative failings that, if allowed to persist, will further tarnish the public image of the Organization. The Tribunal finds that, in addition to having lost the use of money that should have been paid to her, the Applicant was subjected to both inconvenience and unfair treatment by the Organization. For all this she is entitled to compensation, which the Tribunal fixes at $3,000.

VIII. In view of the foregoing, the Tribunal orders the Respondent to pay to the Applicant the amount of $3,000.

All other pleas are rejected.

(Signatures)

Jerome ACKERMAN
President

Luis de POSADAS MONTERO
Vice-President

Mikuin Leliel BALANDA
Member

Geneva, 21 July 1995

R. Maria VICIEN-MILBURN
Executive Secretary